

# **EXHIBIT**

## **B**

**2/14/2008 Goldberg, Caren**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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EDWARD M. SULLIVAN,

Plaintiff,

07-CV-00003

-against-

(BSJ) (KNF)

JEFFREY BRODSKY, ERIC KAYNE, and,  
MORGAN STANLEY,

Defendants.

-----x

February 14, 2008

9:39 A.M.

Deposition of CAREN GOLDBERG, Ph.D.,  
taken by Defendants, pursuant to Agreement, at the  
offices of Morgan, Lewis & Bockius LLP, 101 Park  
Avenue, New York, New York, 10178, before Angela  
Castoro, a Registered Professional Reporter and  
Notary Public within and for the State of New  
York.

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2 A. Yes.

3 Q. It is also important that you  
4 provide verbal responses since this is be  
5 recorded. Nodding is, you know, not helpful,  
6 a-ha or other similar gestures is not helpful  
7 as well. We need yes or no or everything to  
8 be a verbal response. Do you understand that?

9 A. Yes.

10 Q. Do you understand that all the  
11 answers that you will be giving here today is  
12 provided as under oath and at the risk of  
13 perjury if you should be dishonest in your  
14 answers?

15 A. Yes.

16 Q. That is the same weight as if you  
17 were testifying in a court of law. Do you  
18 understand that?

19 A. Yes.

20 Q. Have you ever been deposed  
21 before, Dr. Goldberg --

22 A. No.

23 Q. -- in any matter?

24 A. No.

25 Q. Have you ever been a plaintiff or

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2 defendant in a lawsuit?

3 A. I have.

4 Q. And what was the nature of that  
5 action?

6 A. That's something that you  
7 probably need to subpoena.

8 MR. KAPLAN: I ask that you  
9 instruct your client to answer the  
10 question.

11 Q. You don't have --

12 A. I have a confidentiality  
13 agreement.

14 Q. I am asking the nature of the  
15 action.

16 A. Sexual harassment suit.

17 Q. That you were the plaintiff or  
18 defendant?

19 A. Plaintiff.

20 Q. And you were not deposed in that  
21 matter?

22 A. No.

23 Q. And when was that?

24 A. 2004, '05. I am not really sure.

25 Q. That was against George

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2 Q. In any of the publications that  
3 you drafted that were peer reviewed, did you  
4 ever take a specific case, manager acts and  
5 employee Y and discuss whether manager acts  
6 were relying upon stereotypes in making  
7 decisions about employee Y?

8 A. I understand the question. No,  
9 that's not the type of research that I do.

10 Q. Okay. So you cannot do that?

11 A. Correct.

12 Q. Have you ever read any  
13 peer-reviewed article or anyone else gave a  
14 specific explanation of determining whether  
15 manager X used stereotypes in his decisions  
16 about employee Y?

17 A. Actually, something like that  
18 would not appear in a peer-reviewed article in  
19 my field.

20 Q. Okay.

21 A. Because the peer-reviewed  
22 articles or peer-reviewed journals in my field  
23 really focus on -- there are several criteria  
24 that make for good research, and one of them  
25 is the extent to which you can generalize

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2 findings to the population. And if you are  
3 talking about an idiosyncratic case, you can't  
4 generalize it to the population.

5 Q. You can't, right?

6 A. You cannot.

7 Q. Okay. I am going to get to the  
8 specifics of the report that you prepared in  
9 this case in a little bit. But isn't that  
10 exactly what you did in your report, that you  
11 took an individual case and based it on  
12 generalities?

13 A. No.

14 Q. No?

15 A. No.

16 Q. Explain to me how that's not the  
17 case, that you are not taking a specific case  
18 and basing it upon generalities.

19 A. I don't think the generalities  
20 are society general or what you are calling  
21 generalities. What do you mean by  
22 "generalities"? Let me backtrack.

23 Q. You know what, I will cover that  
24 when we get to the report.

25 You do make in this report that

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2 you prepared in connection with this case a  
3 specific finding about how a specific manager  
4 relied upon stereotypes on a specific  
5 employee, correct?

6 A. Yes.

7 Q. You never did that in any of your  
8 other articles or research or studies,  
9 correct?

10 A. Actually, I have done it before  
11 when I did the Dateline NBC interview.

12 Q. I am not talking about Dateline  
13 interviews. I am talking about in your  
14 scholarly work, have you ever drafted any  
15 articles, published any articles, done any  
16 studies where you scientifically took your  
17 knowledge and made an assessment that a  
18 specific manager was using stereotypes against  
19 a specific employee?

20 A. Well, that wouldn't be  
21 scientific.

22 Q. It wouldn't be scientific to do  
23 that?

24 A. In an academic sense. Because  
25 when we publish in peer-reviewed journals, one

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2 of the criteria is whatever we do has to be  
3 something that's replicable by somebody else  
4 and you can't have one person make one  
5 observation about somebody and another  
6 researcher replicate it because the other  
7 researcher doesn't have the same data.

8 Q. But I believe that you said that  
9 it would not be scientific or you cannot --

10 A. In the academic sense.

11 Q. Let me just finish the question.

12 A. Sorry.

13 Q. In the academic sense, you cannot  
14 scientifically make any determinations about  
15 how a specific manager used stereotyping  
16 against a specific employee, correct?

17 MR. WELZER: Objection.

18 A. I think you have actually mixed  
19 my words a little bit.

20 Q. Then correct me.

21 A. Actually, tell me what you said  
22 again. Can you read back what he said?  
23 Because I had something that I was going to  
24 respond to and I lost what it was.

25 MR. WELZER: Also, Seth, we have

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2 been going from my watch about an hour  
3 and six minutes. Whenever you find a  
4 good time for a break, let's take one.

5 And also Dr. Goldberg, if you  
6 need a break for any reason, just let  
7 us know.

8 THE WITNESS: Okay. After this  
9 question would be good for me.

10 (Record read.)

11 A. Actually, it is not that you  
12 can't make that determination, but it is just  
13 not something that would be publishable in a  
14 journal.

15 Q. Why would it not be publishable  
16 in a journal?

17 A. Because journals publish things  
18 that can be generalized or I should say  
19 journals that publish empirical research, and  
20 that's the kind of research that I generally  
21 publish and that's generally what most  
22 peer-reviewed journals are.

23 Q. And is the example we're talking  
24 about here nonempirical?

25 A. Correct.

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2 Q. Based on what statistics?

3 A. Based on statistics.

4 Q. In that report did you make any  
5 conclusions about whether a specific employee  
6 in any school was the victim of  
7 discrimination?

8 A. No. That's not what I was asked  
9 to do in that particular case.

10 Q. Could you, based on the  
11 statistics that you had, make any  
12 determinations about a particular employee if  
13 you had no other information about whether any  
14 given employee was the victim of  
15 discrimination?

16 A. No. Not that I couldn't, but  
17 that it can't be done.

18 Q. Did you prepare an expert report  
19 in any other case that you served as an expert  
20 on?

21 A. No.

22 Can I clarify something that  
23 occurred before the break, because it goes  
24 back to this generalized thing. I had a hard  
25 time really understanding what you were

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2 getting at, but as I was on my way to the  
3 bathroom it kind of occurred me that I think I  
4 can clarify things a little bit better.

5 You had asked me about drawing a  
6 conclusion in the specific case and Frank had  
7 objected, although I understood you to mean  
8 Mr. Gorman's decision to terminate Ed  
9 Sullivan, but what I wanted to get at was in  
10 any Social Science Journal, you would never  
11 have that, something like that published  
12 because one of the criteria or one of the  
13 standards for publishing is that something be  
14 falsifiable.

15 And if you have a specific case,  
16 it cannot be falsified because if I make the  
17 assessment that Mr. Gorman discriminated  
18 against Ed Sullivan and then another  
19 researcher behind me, you know, a couple of  
20 years, months, however later, looks at a  
21 specific discrimination case and they  
22 determine that there was no discrimination,  
23 that hasn't falsified what I have done because  
24 their case has very idiosyncratic  
25 particularities, just as this case has very

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2 idiosyncratic particularities.

3 So for that reason, journals in  
4 my field don't publish specific case sorts of  
5 things. Because they are not falsifiable and  
6 that's kind of one of the criteria for good  
7 science.

8 Q. When you say "falsifiable," what  
9 do you mean?

10 A. That means I find something, you  
11 know, in my sample of, you know, 300 new hires  
12 at an organization and then you're studying  
13 the same thing, you know, at a different  
14 organization using, you know, a different  
15 number, for that matter new hires, and you  
16 don't find the same thing.

17 Well, then that's falsifiable,  
18 because then if I did find significant effects  
19 and you don't, then we can say okay, well,  
20 whatever I found doesn't generalize. There is  
21 some boundary condition on it.

22 It is kind of incumbent on the  
23 people who are standing on my shoulders, if  
24 you will, to come back and say okay well, you  
25 know, Goldberg found this, I didn't find this.

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2 Well, why didn't I find this? Well, maybe  
3 there is something about my samples, so maybe  
4 it occurs in the legal field, but it doesn't  
5 occur in academia.

6 Q. You are giving an example, if I  
7 understand you correctly, when you say whether  
8 it is falsifiable, do you mean whether someone  
9 else has the ability to check it for accuracy?

10 A. Not to check the finding, but to  
11 check the generalizability.

12 Q. Just using what you start as the  
13 premise, it's your finding that Mr. Gorman  
14 used stereotypes in terminating Mr. Sullivan?

15 A. Correct.

16 Q. That finding is not falsifiable,  
17 correct?

18 A. Correct.

19 Q. There is no one that can come  
20 back and say, I have done this analysis and  
21 because of X, Y, Z, Dr. Goldberg, you're  
22 wrong, correct?

23 A. Actually, I think you put words  
24 in my mouth. People can always come back and  
25 claim that I am wrong.

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2 Q. Then just to streamline this,  
3 define "falsifiable."

4 A. Okay. Falsifiable means that you  
5 have a hypothesis, you test that hypothesis  
6 using data and somebody else comes behind you  
7 and retests that same hypothesis using  
8 different data. I think the key is here that  
9 it is a different data set or different data  
10 points. And, therefore, they may not find --  
11 if they don't find the same thing, then that  
12 suggests that there is some boundary condition  
13 on the support for that hypothesis.

14 Q. And in this case there could be  
15 no different data to examine to test the  
16 validity of your conclusion; is that right?

17 A. No. There is always -- I mean,  
18 you could look at any other age discrimination  
19 case. But if somebody behind me looks at, you  
20 know, did, you know, Mr. Smith discriminate  
21 against Mr. Jones on the basis of age, well,  
22 the conditions surrounding that specific case  
23 are very different than this situation  
24 surrounding this specific case with Mr.  
25 Sullivan.

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2 Q. Right. Just to follow through  
3 your point then, there is no way to test with  
4 anybody else the accuracy of your conclusions;  
5 is that right?

6 MR. WELZER: Objection.

7 A. It is not a test of all  
8 hypothesis. I didn't go in with a hypothesis  
9 that Mr. Sullivan was discriminated against on  
10 the probability of less than or equal to .05,  
11 which is the kind of hypothesis test in this  
12 empirical research. This isn't empirical  
13 research case.

14 Q. Okay. So this is not an  
15 empirical research case. So there is no  
16 specific scientific methods that you used to  
17 come to your conclusion here, correct?

18 A. That's not correct.

19 Q. Well, if it is not empirical,  
20 what could you mean by that?

21 A. Well, you could come to  
22 conclusions through induction, you could come  
23 to conclusions through deduction.

24 Q. What did you use here?

25 A. Here, I used induction. I mean,

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2 there is plenty of research suggesting what  
3 constitutes stereotypes. There is plenty of  
4 evidence in the research literature sort of  
5 based on hypothesis testing of what the  
6 stereotypes concerning older workers are.  
7 So based on that and based on the evidence  
8 provided in the depositions that I read and  
9 the exhibits, I base my -- I formed my  
10 conclusion.

11 Q. You formed a conclusion, but it  
12 is not based on a scientific method, correct?

13 A. No, that's not correct.  
14 Induction is a scientific method, it is just  
15 not -- it is just not empirical.

16 Q. Then define induction for me as  
17 you understand that.

18 A. Induction is taking existing  
19 foundations and extending them to a new  
20 situation.

21 Q. To a specific individual case?

22 A. Could be, need not be.

23 Q. Well, is there any scientific  
24 method that you are aware of that you take  
25 existing foundations that you were describing

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2 Q. At this point you don't even know  
3 what you are to be used as an expert witness  
4 for?

5 A. I know that it is an age  
6 discrimination case.

7 Q. I understand that you know it is  
8 an age discrimination case. But your  
9 testimony, if I am not mistaken, up until this  
10 point you have no idea -- how or why they are  
11 going to use your services, correct?

12 A. Well, I think it was pretty clear  
13 that they wanted me to write an expert report  
14 and that they would want me to be deposed and  
15 that there would be a possibility of being on  
16 the witness stand.

17 Q. Okay. So was that discussed in  
18 your first conversation with plaintiff's  
19 counsel?

20 A. Yes.

21 Q. I asked you this before, what did  
22 plaintiff's counsel tell you that they wanted  
23 you to write a report about?

24 MR. WELZER: Objection. She  
25 answered that before.

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2 MR. KAPLAN: I don't think she  
3 did.

4 MR. WELZER: She did.

5 MR. KAPLAN: I am going to ask  
6 you again because I didn't hear.

7 MR. WELZER: Asked and answered.

8 A. They wanted my expert opinion as  
9 to whether there was age discrimination.

10 Q. In this specific case?

11 A. In the case of Mr. Sullivan  
12 against Morgan Stan or -- I guess it is  
13 technically Brodsky et al.

14 Q. And they asked you to write a  
15 report on that topic?

16 A. Correct.

17 Q. Did they ask you to write whether  
18 stereotypes were or were not an issue in the  
19 determination?

20 A. No.

21 Q. It was just whether age  
22 discrimination was the cause of Mr. Sullivan's  
23 termination?

24 A. Correct.

25 Q. And then when you got the

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2 communication from RTG saying that they wanted  
3 to retain you, what was your response?

4 A. I don't know if I had a separate  
5 e-mail or in their e-mail indicating that then  
6 they attached a contract. So I have a  
7 contract with RTG.

8 Q. Do you still have a copy of that  
9 contract?

10 A. Yes.

11 Q. Does it say in that contract the  
12 purpose of your retention?

13 A. No.

14 Q. As far as you know, though, the  
15 only reason why you were being retained as an  
16 expert witness was to render an opinion on  
17 whether Mr. Sullivan was the victim of age  
18 discrimination; is that right?

19 A. Correct.

20 Q. So you were retained to offer an  
21 opinion on whether Mr. Sullivan was subject to  
22 any type of hostile work environment claim,  
23 correct?

24 A. Correct.

25 Q. And you weren't retained to

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2 it possible that you looked at other things  
3 and you are just not recalling them?

4 A. It is possible.

5 Q. Sometimes when you do the studies  
6 or prepare reports like this, you state the  
7 items that you considered and may or may not  
8 have looked at other ones?

9 A. Well, I do research on this sort  
10 of thing, so I am always looking at those. So  
11 it is kind of hard to say okay, well, I am  
12 only going to think about this -- I am hand  
13 gesturing, sorry.

14 I am only going to think about  
15 this as it relates to this particular thing  
16 that I am working on now. And I am only going  
17 to read this and digest the information as it  
18 pertains to something else, because if I am  
19 reading something -- I do research on older  
20 workers and age stereotypes. I can't say that  
21 I reviewed it without the intent, with or  
22 without the intent of using it --

23 Q. I am trying going to try to  
24 simplify this for you. In this case you list  
25 certain materials that you reviewed on page 5

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2 of the report. As you sit here today, is  
3 there anything that's not listed on page 5  
4 that you reviewed in determining the results  
5 of your report here?

6 A. No.

7 Q. Okay. Who provided you with the  
8 materials you cited here?

9 A. Well, Zuckerman Gore Brandies  
10 provided me with the depositions and the  
11 exhibits. And the scholarly articles are  
12 things that I either had already through my  
13 research or things that I remembered having  
14 read, and I may have sort of checked up on  
15 follow-up research in that area.

16 Q. Let's put the articles aside for  
17 a second. Let's look at the deposition  
18 transcripts and the exhibits.

19 A. Okay.

20 Q. How is it determined which of  
21 those transcripts and exhibits you would look  
22 at?

23 A. It was a fairly random process.

24 Q. What does that mean?

25 A. That means -- I guess initially I

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2 probably looked at the skinniest one first, so  
3 I could feel like I reached a sense of closure  
4 on something.

5 Q. Let me stop you for a second. I  
6 am not asking for the order. I am saying  
7 which materials that you reviewed, who  
8 determined which materials you were going to  
9 review to come up with your conclusion about  
10 age discrimination in this case? Who decided  
11 that you would look at these specific  
12 transcripts and exhibits?

13 A. I have no idea. That's what was  
14 sent to me.

15 Q. By plaintiff's counsel?

16 A. Correct.

17 Q. Okay. Did they give you the  
18 deposition transcripts in full?

19 A. Yes.

20 Q. Or they were just excerpts?

21 A. No, they were in full. Certainly  
22 felt like it when I was reading it. I am  
23 assuming they were pretty long.

24 Q. What about the exhibits, you  
25 mentioned that you reviewed:

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2 "Most of the plaintiff's exhibits  
3 referenced in these transcripts."

4 Who decided which of those  
5 exhibits that you looked at?

6 A. I am assuming plaintiff's counsel  
7 did.

8 Q. It wasn't you?

9 A. I read what was sent to me or I  
10 looked at what was sent to me.

11 Q. Did you ever ask to review  
12 anything else other than what was sent to you?

13 A. I did, actually. There was one  
14 thing that I can't remember what it was, but  
15 there was an exhibit referenced and it was  
16 probably very early -- I shouldn't say  
17 probably. It was very early on in the process  
18 and I called and I said, you know, I am  
19 missing exhibit such and such.

20 And Frank told me that I probably  
21 don't need, you know, every single exhibit.

22 Q. But if you thought it was  
23 important to your analysis, why didn't you  
24 insist on receiving it?

25 A. I -- actually, I don't think --

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2 it probably wasn't -- I don't think it was  
3 important to my analysis.

4 Q. Then why did you ask for it?

5 A. Because this was my first time  
6 providing expert testimony, so when I was  
7 reading the transcript and it referenced  
8 Exhibit X and I looked through the pile of  
9 exhibits and couldn't find Exhibit X, I  
10 thought that there was probably a mistake or a  
11 clerical error. So I was pretty much letting  
12 him know that there is a clerical error and  
13 we're missing that. No, we didn't send you  
14 every single exhibit.

15 Q. It is your understanding that  
16 plaintiff's counsel was making the  
17 determination as to which exhibits were  
18 relevant for you to look at and which ones  
19 weren't, correct?

20 A. I think they cast a pretty broad  
21 net because there were plenty of things in  
22 there that were not really relevant. There  
23 was a handful of things that they did leave  
24 out.

25 Q. The determination as to which

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2 exhibits you should look at was plaintiff's  
3 counsel, not you?

4 A. Yes.

5 Q. And the one time you asked to  
6 look at something else plaintiff's counsel  
7 told you, it probably wasn't relevant and you  
8 just let it go?

9 MR. WELZER: Objection.

10 Q. Is that fair?

11 A. Well, given how it was referenced  
12 in the deposition, it didn't seem relevant.  
13 But just as -- in my efforts to be thorough, I  
14 noticed the -- I noticed it was missing.

15 Q. Other than that one instance, did  
16 you ask to see anything else other than what  
17 they sent you?

18 A. I did. I asked for a list of the  
19 ages of -- I think it was the ages of all the  
20 regional directors and maybe the level below.  
21 I can't remember what they're called.

22 Q. Did you receive that information?

23 A. Actually, I think that Mr. Welzer  
24 pointed out that information that was in one  
25 of the exhibits.

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2 document or exhibit.

3 Q. Are you aware that the deposition  
4 transcripts that you received are not the only  
5 depositions in this case?

6 A. I actually received them in  
7 increments, so initially I received several  
8 and then later -- I guess initially maybe it  
9 was just these that I received. And then  
10 later I received the transcripts of a couple  
11 of other people.

12 Q. So when I asked you before, I  
13 asked you before, did you review any other  
14 documents not listed in there, you said no,  
15 you hadn't looked at any other?

16 A. I hadn't looked at them. And I  
17 still hadn't looked at them.

18 Q. Have you received other documents  
19 that you did not look at?

20 A. Yes.

21 Q. What other documents have you  
22 received that you did not look at?

23 A. Additional deposition  
24 transcripts.

25 Q. Of who?

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2 A. Actually, Mr. Welzer would  
3 probably know better than I would.

4 Q. You don't even know the names of  
5 the people whose deposition transcripts you  
6 were sent?

7 A. If you told me you sent a  
8 deposition transcript for so-and-so, I would  
9 know. But I haven't looked at them. So as  
10 far as I saw, on the front cover sheet where  
11 it says it.

12 Q. Obviously as an expert you want  
13 to give an objective opinion, do you not?

14 A. I do.

15 Q. Isn't it important, though, that  
16 you consider all the facts and all the  
17 testimony before rendering a decision?

18 A. It is important that I get the  
19 report done in a timely manner so that it  
20 could be sent to you. So at some point you  
21 have to limit how much information you're  
22 going to include and there was a point in time  
23 where I felt that I had sufficient information  
24 upon which to base my decision and that I  
25 needed to reach closure.

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2 Q. So it was more important to meet  
3 a deadline than to review all the materials  
4 provided to you?

5 MR. WELZER: Objection.

6 A. I think that was actually a  
7 tricky question.

8 Q. I am trying to understand why you  
9 didn't look at these other materials and you  
10 mentioned that you had a deadline to follow.

11 Here is my question: Did you not  
12 review the other additional transcripts that  
13 you were sent because you had to meet a time  
14 deadline?

15 A. I don't think I even received  
16 them before I needed to send my report.

17 Q. So did you receive these  
18 transcripts after you completed the report?

19 A. Either after or very, very  
20 shortly before where I would have said, there  
21 is just no way I am going to be able to write the  
22 report and spend another zillion hours  
23 reading.

24 Q. Were you done?

25 A. Well, not at the time that you

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2 interjected, but now I am.

3 Q. To this day, have you read those  
4 deposition transcripts?

5 A. No, I haven't.

6 Q. Has a thought occurred to you  
7 that perhaps there might be some relevant  
8 information in these deposition transcripts  
9 that would factor into your report?

10 A. Sure.

11 Q. So can you say with any type of  
12 certainty that your report is based on a full  
13 review of all the relevant facts, when you  
14 haven't reviewed certain deposition  
15 transcripts that were provided to you?

16 A. I feel that I had more than  
17 sufficient evidence from the documents that  
18 were provided and I don't think that there is  
19 anything from another deposition transcript  
20 that would alter my assessment.

21 Q. Without having seen what's in  
22 those deposition transcripts, how do you know  
23 that?

24 A. Well, Mr. Gorman came out and  
25 made several admissions to having relied on

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2 under their own sworn testimony, that wouldn't  
3 affect your conclusion that Mr. Sullivan was a  
4 victim of age discrimination?

5 A. Unless it had to do with the  
6 veracity of whatever I already read.

7 Q. You don't know whether those  
8 transcripts had to do with the veracity of  
9 what you already read, correct?

10 A. I don't.

11 Q. It is possible then what is  
12 contained in those transcripts might affect  
13 your opinion in this report, correct?

14 A. Yes.

15 Q. Okay.

16 Now, you mentioned that you are  
17 going to assume that the stuff that you did  
18 review is accurate. I remember you saying  
19 that a couple of times, correct?

20 A. Yes.

21 Q. How do you know in reviewing  
22 these deposition transcripts that you did read  
23 that everything you read was accurate?

24 A. It is sworn testimony and perjury  
25 is a pretty serious crime.

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1 C. Goldberg

2 A. No.

3 Q. Did you make any efforts to  
4 ensure that the deposition transcripts you  
5 read were credible, accurate and  
6 comprehensive?

7 MR. WELZER: Objection.

8 A. I wasn't really hired to make  
9 that assessment.

10 Q. Well, you are making an  
11 assessment based on the testimony in these  
12 deposition transcripts, correct?

13 A. Yes.

14 Q. So isn't it an absolute  
15 requirement that you feel confident that you  
16 could rely upon the materials that you are  
17 reading?

18 A. I was asked to formulate an  
19 opinion based on the information that I did  
20 read, not to make an assessment as to the  
21 veracity of the information that I read.

22 Q. As a social scientist though,  
23 isn't it important that the data that you are  
24 relying upon you feel is completely accurate?

25 A. Sure.

**2/14/2008 Goldberg, Caren**

1 C. Goldberg

2 Q. Did you make any efforts to  
3 ensure that the testimony in those deposition  
4 transcripts were, in fact, accurate?

5 A. As a first-time expert witness, I  
6 went in assuming that sworn testimony is  
7 accurate.

8 Q. So that would be no?

9 A. What would be no?

10 Q. The answer to the question, did  
11 you make any efforts to ensure that the  
12 materials that you were reviewing were 100  
13 percent accurate and truthful?

14 A. No.

15 Q. Now in deposition transcripts,  
16 would you acknowledge that there is a  
17 divergence of opinion as to certain facts that  
18 occurred?

19 A. Yes.

20 MR. WELZER: Objection.

21 Q. Okay. If you are assuming  
22 everything is 100 percent true and two people  
23 can view things differently, have differing  
24 testimony, how do you know which one is the  
25 truth for purposes of your report?

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1 C. Goldberg

2 looking for.

3 Q. Everything that you were looking  
4 for?

5 A. As it was referenced in the  
6 transcripts.

7 Q. Are you aware that during the  
8 course of discovery, there have been thousands  
9 of documents exchanged between the parties?

10 A. I was not aware, no.

11 Q. Now having been aware of that, is  
12 it possible --

13 MR. WELZER: Objection.

14 Q. Now, having been aware of that,  
15 is it possible that there might be relevant  
16 data in those thousands of documents that you  
17 weren't privy to?

18 MR. WELZER: Objection.

19 A. Relevant to?

20 Q. To your determination that Mr.  
21 Sullivan was the victim of age discrimination.

22 A. Can you tell me what sorts of --

23 Q. I am just asking about  
24 possibilities. Let me backtrack for a second.

25 Roughly how many documents, aside

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1 C. Goldberg

2 from the transcripts, how many exhibits did  
3 you review, approximately?

4 A. Between 50 and 75, I believe.

5 Q. 50 and 75 exhibits?

6 A. Yes. Between 50 and 75 exhibits.

7 Q. Did you ever ask plaintiff's  
8 counsel whether there was additional documents  
9 being exchanged back and forth between the  
10 parties in this litigation?

11 A. No.

12 Q. If you knew that there were  
13 thousands of other documents being used in  
14 this litigation, might you want to take a look  
15 at those before coming to the conclusion that  
16 you did in this report?

17 MR. WELZER: Objection.

18 A. Can you repeat the question? Or  
19 can you read back the question?

20 Q. I will rephrase it, actually.

21 A. Okay.

22 Q. You stated before that you  
23 reviewed approximately 45 to 50 exhibits,  
24 right?

25 MR. WELZER: Objection.

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1 C. Goldberg

2 A. Excuse me, actually that's not  
3 what I said. I believe I said 50 to 75.

4 Q. 50 to 75 exhibits, okay.

5 Now if you knew that there were  
6 hundreds of thousands of documents being  
7 exchanged between the parties in this  
8 litigation, would you want to review those  
9 documents, at least some of them, all of them  
10 before coming to your conclusion that you did  
11 in this report?

12 MR. WELZER: Objection.

13 A. If I had an infinite period of  
14 time to do the report, and if I -- if there  
15 was -- I don't think there was any specific  
16 questions where I said, help, if only knew  
17 blah, blah, blah.

18 Q. I understand you don't know  
19 what's in the content of these other  
20 documents. But you are making a conclusive  
21 determination that Mr. Sullivan was terminated  
22 because of his age, correct?

23 A. Yes.

24 Q. Might there be data contained in  
25 these other thousands of documents that were

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1 C. Goldberg

2 exchanged that might affect your opinion as to  
3 whether Mr. Sullivan was terminated because of  
4 his age?

5 MR. WELZER: Objection.

6 Q. Is it possible?

7 A. It is possible.

8 Q. So it is possible that there  
9 could be data in these other documents which  
10 would explain other reasons, possible other  
11 reasons for Mr. Sullivan's termination?

12 MR. WELZER: Objection.

13 A. Well, I think the information  
14 that's provided in the documents that I have  
15 make clear that age was part of the equation.  
16 Additional documents may alter the extent to  
17 which I feel that age played a factor, but age  
18 played a factor.

19 Q. But could there have been  
20 documents that you see that might have changed  
21 your mind?

22 A. Possibly.

23 Q. The articles that you reviewed in  
24 preparing the report, how did you select the  
25 articles that you were using in this report?

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1 C. Goldberg

2 A. A lot of stuff I sort of have  
3 floating in my head from doing research in the  
4 area. So, I mean, I could sort of say off the  
5 top of my head, oh, older workers in  
6 trainability, these are researches that I have  
7 done studies on that stereotype.

8 Q. I have a quick question for you.

9 MR. WELZER: I am sorry, are you  
10 done answering?

11 MR. KAPLAN: I thought she was  
12 done. If you are not done --

13 MR. WELZER: You keep saying you  
14 thought she was done when it is clear  
15 that she wasn't done.

16 MR. KAPLAN: I thought that she  
17 was done. I do not mean to be rude. I  
18 apologize.

19 Q. Please continue your answer.

20 A. Okay.

21 Q. You had said that some of these  
22 studies were "floating around in your head,"  
23 you just used that phrase. Do you need her to  
24 repeat it?

25 (Record read.)

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1 C. Goldberg

2 Q. When you used that terminology,  
3 "floating around in your head," are you basing  
4 that on any type of stereotypes?

5 A. I actually knew this question was  
6 going to come up when you asked me about the  
7 phraseology.

8 No, we call it walking around  
9 knowledge. Just like you --

10 Q. I am sorry, go ahead.

11 A. It has nothing to do with  
12 stereotypes in this context?

13 Q. In this context. How do you know  
14 whenever anyone using the term "stuff floating  
15 around in their head," that it's necessarily  
16 relied upon stereotypes?

17 A. Well, it has -- whether it has to  
18 do with an individual's membership in a  
19 particular category and whether it has to do  
20 with an individual's perception of what fits  
21 in a particular category.

22 Q. Would you agree that every time  
23 someone using the term "stuff floating around  
24 in their head," they are not necessarily  
25 invoking any stereotypical thoughts, would you

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1 C. Goldberg

2 agree?

3 A. Every time, well, I would  
4 never -- I would probably not agree to every  
5 time.

6 Q. In fact, you just said you used  
7 that term and you were not referring to any  
8 stereotypes, correct?

9 A. That is correct.

10 Q. So how is it that you could ever  
11 say that when a specific person uses the term  
12 something about "bits of information floating  
13 around in their head," that it automatically  
14 relies upon stereotypes?

15 A. In the context in which Mr.  
16 Gorman said it, he was referring to bits of  
17 information floating around in his head as to  
18 what fit in the organization and bits of  
19 information floating around in his head as to  
20 Mr. Sullivan's characteristics or his  
21 impressions -- actually, I think he said my  
22 gut instinct, my judgment, my initial  
23 judgment. He said several things.

24 Q. How do you know when Mr. Gorman  
25 said he is relying on bits of information in

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1 C. Goldberg

2 A. Yes.

3 Q. You were co-author for that  
4 article:

5 "Work Attitudes and Decisions as  
6 a Function of Manager Age and Employee  
7 Age."

8 Is that right?

9 A. Yes.

10 Q. What was your role in that  
11 article?

12 A. Actually I coded -- because this  
13 started, this was a probably an eight-year  
14 process. So it started back when I was in  
15 graduate school. So I coded all the data,  
16 made sure that all the data were accurate. I  
17 analyzed the data. And in writing the paper  
18 itself, did several series of round robins.

19 Q. When you prepared the reports,  
20 kind of like the ones that you drafted in this  
21 case, is it important that the articles and  
22 studies you rely upon are accurate and up to  
23 date?

24 A. Say that again.

25 MR. WELZER: Objection.

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1 C. Goldberg

2 article to be a reliable source of research  
3 today?

4 A. A reliable source?

5 Q. Yes.

6 A. Can you say what you mean --  
7 reliable means something specific to mean in a  
8 statistical sense.

9 Q. Well, you cite this article as an  
10 example over and over again as authority for  
11 the proposition that age stereotypes are  
12 prevalent in the workplace, do you not?

13 A. Yes.

14 Q. So you cite that as support for  
15 your statement, do you not, that age  
16 stereotypes are prevalent in the workplace, do  
17 you not?

18 A. Yes.

19 Q. Do you think, as we sit here  
20 today in 2008, that you could still rely upon  
21 that article for the proposition that age  
22 stereotypes are very prevalent in the  
23 workplace?

24 A. Yes.

25 Q. And that article was published in

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1 C. Goldberg

2 the Journal of Applied Psychology?

3 A. Yes.

4 Q. Are you familiar with that  
5 publication?

6 A. Yes.

7 Q. Is that considered a reliable  
8 source?

9 A. Actually, that is probably --  
10 depending on who you ask and who ranks it, the  
11 top if not -- one of the top, if not the top,  
12 journal in my field.

13 Q. Are you aware of an article  
14 published in 2004 in the Journal of Applied  
15 Psychology by E.M. Wise and T.J. Mauer called,  
16 "Age Discrimination in Personnel Decisions, a  
17 Reexamination"?

18 A. I'd have to see an abstract of  
19 it. I read a lot of Todd Mauer stuff. I am  
20 not 100 percent sure if that's among the stuff  
21 of his that I read or not.

22 Q. Which?

23 A. Todd Mauer.

24 Q. Todd Mauer. You are familiar  
25 with Todd Mauer, you are not sure whether you

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1 C. Goldberg

2 read the specific article?

3 A. I read a lot of his work and I  
4 can't tell you whether I read that one  
5 specifically or not.

6 Q. I am going to read you a small  
7 excerpt from that article from page 1554 of  
8 that article.

9 Again, the article called "Age  
10 Discrimination and Personnel Decisions: A  
11 Reexamination." In that article Mr. Mauer  
12 states as follows:

13 "Far fewer significant effects  
14 were found in this study than were  
15 originally reported in the original  
16 Rosen and Jerde 1976 study. One  
17 possibly explanation for the results is  
18 that there simply is not as much age  
19 discrimination now as there was in the  
20 mid-1970s."

21 Have you heard about this study  
22 before?

23 A. That really doesn't tell me a  
24 whole lot, but interestingly Mauer just wrote  
25 an article two years ago, I want to say,

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1 C. Goldberg

2 it mean -- kind of what I said before, has --  
3 if I were a reviewer or in my role as an  
4 editor, and then if somebody didn't find  
5 support for previous been well-supported, my  
6 first reaction is to look at the different and  
7 the current study or studies, if you suggested  
8 multiple, to say, you know, what are the  
9 differences and how are these studies are  
10 being conducted? Are they using similar  
11 samples, occurring in similar industries, are  
12 the ages or targets different?

13 Q. In this report that you prepared,  
14 you did not even cite or address these more  
15 recent articles that talk about the lack of  
16 stereotyping in the workplace; isn't that  
17 right?

18 MR. WELZER: Objection.

19 A. Can you read that back?

20 MR. KAPLAN: I am going to  
21 withdraw the question.

22 A. Okay.

23 Q. Before preparing your report, did  
24 you ever meet Mr. Sullivan?

25 A. No.

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1 C. Goldberg

2 Q. Did you ever speak with him?

3 A. No.

4 Q. Did you have any interaction with  
5 Mr. Sullivan at all?

6 A. Never met him until today.

7 Q. Ever see a photo of him?

8 A. No.

9 Q. Did you ever hear an audiotape of  
10 what he sounds like?

11 A. No.

12 Q. Did you ever conduct any studies  
13 on how other people perceived Mr. Sullivan?

14 A. Well, this kind of goes back to  
15 the same issue that we talked about this  
16 morning. A study to me is a very specific,  
17 has a very specific meaning. And Ed Sullivan  
18 is only one observation. So....

19 Q. Other than reading the deposition  
20 transcripts that you read, did you do any  
21 independent analysis of how Mr. Sullivan's  
22 co-workers perceive him?

23 A. No. That wasn't really what I  
24 was asked to opine on.

25 Q. Do you know, having just met Mr.

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2 Sullivan before writing this before comes from  
3 what you read in those transcripts and the  
4 exhibits?

5 A. Yes.

6 Q. Did you ever meet Mr. Gorman?

7 A. No.

8 Q. Have you ever spoken with him?

9 A. No.

10 Q. Any interaction with Mr. Gorman  
11 at all?

12 A. No.

13 Q. Have you ever seen a photo of  
14 him?

15 A. Yes.

16 Q. You have seen a photo of Mr.  
17 Gorman?

18 A. After writing my report, yes.

19 Q. Before you wrote your report, did  
20 you see a photo of Mr. Gorman?

21 A. No.

22 Q. Have you had any opportunity,  
23 outside of reading the deposition transcripts,  
24 to observe any type of interactions between  
25 Mr. Gorman and Mr. Sullivan?

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1 C. Goldberg

2 A. Say that again.

3 Q. Have you ever observed Mr. Gorman  
4 with Mr. Sullivan?

5 A. No.

6 Q. Is it correct to say that your  
7 only knowledge of Mr. Gorman comes from what  
8 you read in the selected deposition  
9 transcripts?

10 A. What do you mean by "selected  
11 deposition transcripts"?

12 Q. You stated before you did not  
13 read all those deposition transcripts in this  
14 case.

15 A. Okay. So, yes, my only knowledge  
16 of Mr. Gorman comes from the transcripts that  
17 I read.

18 Q. Did you ever meet Ms. Stilwell?

19 A. No.

20 Q. Did you ever speak with her?

21 A. No.

22 Q. Did you ever have any interaction  
23 with her?

24 A. No.

25 Q. Did you ever see a photo of her?

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1 C. Goldberg

2 A. No.

3 Q. Do you know whether she looks her  
4 age?

5 A. No idea.

6 Q. No idea.

7 A. Actually us -- excuse me,  
8 somebody in their deposition, it was Mr.  
9 Gorman, was asked to estimate how old several  
10 people were and one of them was Ms. Stilwell  
11 I can't remember what his answer was, but I  
12 remember him saying that he was always told  
13 not to guess a woman's age.

14 Q. I am asking you, do you have any  
15 idea whether Ms. Stilwell looks her age or  
16 not?

17 A. Other than from what Mr. Gorman  
18 said which I don't remember at this particular  
19 moment in time, no.

20 Q. But what you said Mr. Gorman said  
21 was that he is not supposed to comment on a  
22 woman's age?

23 A. But then he was directed to  
24 answer.

25 Q. Okay. What you are describing is

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1 C. Goldberg

2 information, as provided."

3 Do you see that sentence?

4 A. Yes.

5 Q. Have you conducted any further  
6 work since you completed this report?

7 A. No, I have not.

8 Q. So what other work are you  
9 anticipating?

10 A. It is possible that I may review  
11 the additional transcripts that were sent to  
12 me. And it is possible that I may review the  
13 additional exhibits.

14 Q. Why would you do that?

15 A. If this were to go to trial.

16 Q. Right. Okay. If this would go  
17 to trial, what?

18 A. I would probably have more time  
19 to consider additional information.

20 Q. Why would you need to consider  
21 additional information?

22 MR. WELZER: Objection.

23 A. I didn't say that I did need to.

24 Q. You said if this goes to trial,  
25 you might read the other exhibits and other

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1 C. Goldberg

2 Sullivan?

3 A. Yes.

4 Q. So is it your understanding that  
5 knowing the plaintiff's counsel represents Mr.  
6 Sullivan, that when they are asking you to  
7 render an opinion as to whether age  
8 discrimination occurred, they would like you  
9 to come out on the side that age  
10 discrimination did occur?

11 A. That's kind of irrelevant. My  
12 professional reputation is far more important  
13 than \$250 an hour.

14 Q. You didn't answer the question.

15 A. Okay.

16 Q. Knowing that plaintiff's counsel  
17 represents Mr. Sullivan, was it your  
18 understanding as a professional that the way  
19 they would like you to come out is to find  
20 that Mr. Sullivan was the victim of age  
21 discrimination?

22 A. Sure.

23 Q. What efforts did you take to make  
24 sure that your report wasn't the result of any  
25 type of confirmation bias?

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1 C. Goldberg

2 Q. What's your methodology for  
3 making that connection?

4 A. Well, based on my understanding  
5 or based on my knowledge of the stereotyping  
6 literature, based on what I and other  
7 researchers in the area of stereotypes --  
8 based on the way in which stereotypes have  
9 been defined, Mr. Gorman -- it is almost a  
10 semantic issue.

11 And that's why I said I didn't  
12 really think it was subject to interpretation  
13 because it's really a semantic issue. Whether  
14 you say gut instinct, initial reaction based  
15 on my limited information or whether you say  
16 based on the stereotype that I have is a  
17 semantic issue.

18 Q. I would think it is anything but  
19 semantics. You are making a very big leap.

20 Are you saying there is studies  
21 that show where age stereotypes are more  
22 prevalent and you are making a conclusive  
23 determination in this case that Mr. Gorman  
24 definitively used those stereotypes in  
25 terminating Mr. Sullivan; correct?

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1 C. Goldberg

2 A. Actually, I think you are kind of  
3 putting words in my mouth. Mr. Gorman stated  
4 in his deposition that he had limited  
5 information, so he based his gut instincts,  
6 his judgment, his -- he used several different  
7 words that are synonymous with stereotypes to  
8 determine that Mr. Sullivan did not have the  
9 energy that was required, that Mr. Sullivan  
10 would not be able to cope with the changes  
11 that the organization was going through.

12 Q. Isn't it possible that someone  
13 could use those same terms that you say are  
14 synonymous with age stereotypes and mean them  
15 in a completely different context?

16 A. In a different context, yes.

17 Q. Isn't it possible that a person  
18 like Mr. Gorman could say he is relying upon  
19 things like gut instinct and judgment and  
20 things like that and be relying upon things  
21 other than Mr. Sullivan's age; isn't that  
22 possible?

23 A. Well, given the content of what  
24 it was that he was referring to, those are  
25 pretty well-cited age stereotypes.

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1 C. Goldberg

2 which is a gut instinct, which is an initial  
3 reaction, which all of those things that Mr.  
4 Gorman -- those words that Mr. Gorman used.

5 Q. There is nothing in the  
6 literature that you have reviewed or authored  
7 yourself which says every time a manager makes  
8 decisions based on his "gut instinct" or  
9 "suggestive judgment," he is necessarily  
10 relying upon stereotypes; is that right?"

11 A. That wouldn't be in the  
12 literature.

13 Q. But it is in your literature in  
14 the report. Are you saying because he used  
15 those terminologies, he is necessarily relying  
16 upon age stereotypes; isn't that what you  
17 are saying?

18 A. There is a few things. I  
19 wouldn't call my report the academic  
20 literature. It is based on the academic  
21 literature, but I would not call it an  
22 academic literature. This is not something I  
23 would submit to peer review journal and say  
24 can you -- I am submitting this, you have to  
25 pass the rigger of the peer review process.

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1 C. Goldberg

2 A. I would have to -- if somebody  
3 had themselves as the subject of -- him or  
4 herself as the subject of the statement had  
5 energy as the object of the statement and had  
6 gut instinct, yada, yada, you know the list,  
7 as the verb in the statement, it would be by  
8 definition of stereotype.

9 (Recess taken from 1:51 P.M.

10 until 1:57 P.M.)

11 Q. Dr. Goldberg, I am going to try  
12 to simplify this a little bit so we move on to  
13 something else.

14 Would you agree that a manager is  
15 not necessarily relying upon stereotypes every  
16 time he or she uses the term "bits of  
17 information"?

18 A. Yes.

19 Q. Would you agree that a manager is  
20 not necessarily relying upon stereotypes every  
21 time he or she uses the term "judgment"?

22 A. Yes.

23 Q. Would you agree that a manager is  
24 not necessarily relying upon stereotypes every  
25 time he uses the term "rapid points of view"?

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1 C. Goldberg

2 A. Yes.

3 Q. Would you agree that a manager is  
4 not necessarily relying upon stereotypes every  
5 time he uses the term "bits of information in  
6 my head"?

7 A. Yes.

8 Q. Would you agree that a manager is  
9 not necessarily relying upon stereotypes every  
10 time he uses the term "energy" as a reason for  
11 a termination?

12 A. Yes.

13 Q. So is it only the combination of  
14 all those factors here that led you to the  
15 conclusion that Mr. Gorman was terminating Mr.  
16 Sullivan because of his age?

17 A. I would take out the word "only."  
18 It is the combination of those factors that  
19 led to my -- to my conclusion.

20 Q. So it is the use of terms "bits  
21 of information," "judgment," "rapid points of  
22 view," combined with the term "energy" that  
23 led you to that conclusion?

24 A. Combined with the term -- I would  
25 say insofar as the term "energy" either refers

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1 C. Goldberg

2 correct?

3 A. Yes.

4 Q. To make the determination whether  
5 the use of energy is based on age-based  
6 factors, don't you need to know the facts that  
7 led the person to use that term in order to  
8 make that determination?

9 A. Yes.

10 Q. Are there generally accepted  
11 standards for collecting data when you do a  
12 report like this?

13 A. A report like this?

14 Q. Yes.

15 A. Like my expert report?

16 Q. Yes.

17 A. I have no idea, I have never done  
18 one before.

19 Q. Okay. So that would be, you  
20 don't know whether there are standards or not?

21 A. Correct.

22 Q. Okay. In preparing a report like  
23 Exhibit 1, are there generally accepted  
24 standards for coding that data?

25 A. I didn't code any data.

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Q. Do you normally code data ahead of time?

A. Tell me what you mean by "data."

Q. The facts that you use in this report, do you sometimes prepare a coding manual in advance to say if I find X, it means Y?

A. This is the first time I have done it. So I didn't do it in this case and obviously it is not a general rule for me, because this is the only case that I have done.

Q. Isn't it generally required when you are making a determination like this, to create a coding manual to prevent any type of subjectivity bias?

A. I have no idea.

Q. To be a reliable report in your field, is it important to rely on more anecdotal data?

A. To be a reliable report?

Q. Yes.

A. When you say "report," are you talking about an expert witness report or are

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1 C. Goldberg

2 the report that you created here to have any  
3 sense of reliability, that you have to  
4 accurately characterize all the underlying  
5 factual data that you set in your report?

6 A. Can you repeat it?

7 Q. If you would like a judge and  
8 jury to believe your report, would you agree  
9 it is important that you accurately  
10 characterize the facts as you state them in  
11 the report?

12 A. Yes.

13 Q. If you would like a judge and  
14 jury to believe your report, do you agree it  
15 is important that in your report you consider  
16 all of the relevant facts that would go into  
17 the analysis?

18 A. I think there is a trade-off  
19 between considering all the facts and having a  
20 report that a judge and jury would read.

21 Q. You are not answering the  
22 question.

23 Would you agree that for this to  
24 be a believable report in front of a judge and  
25 jury, that you need to consider all of the

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1 C. Goldberg

2 my opinion.

3 Q. Was there anything in the record  
4 that said the reason why Mr. Gorman decided to  
5 terminate Mr. Sullivan was because he  
6 forum-shopped?

7 A. No.

8 Q. So as far as you know, the  
9 forum-shopping played no role in the  
10 termination decision?

11 A. Actually, your previous question  
12 I never actually completed the answer before  
13 you shot the second one out. But I never  
14 fully said, if you recall back we had this  
15 little sort of back and forth, I never said  
16 that Mr. Gorman was the sole decision-maker in  
17 this process.

18 Q. You don't know definitively one  
19 way or the other who the decision-maker was  
20 then, correct?

21 A. I think it was a two-part  
22 decision and I think the decision was that the  
23 woodshed group was going to put Mr. Sullivan  
24 on the chopping block and Mr. Gorman was going  
25 to drop the guillotine.

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2 there?

3 A. Yes.

4 Q. That these additional factors  
5 make reliance on age stereotypes more likely,  
6 but not necessarily definitive; is that right?

7 A. Well, as I mentioned before, this  
8 goes back to this issue, you know,  
9 falsifiability, in social sciences you never  
10 say 100 percent. So....

11 Q. The first factor that you mention  
12 is a culture of age-based animus; do you  
13 recall writing that?

14 A. Yes.

15 Q. And you said on page 18:

16 "Morgan Stanley had a culture of  
17 age-based animus."

18 Correct?"

19 A. I know I said it, I take your  
20 word for it that I said it here.

21 Yes.

22 Q. And you came to the conclusion  
23 that Morgan Stanley had a culture of age-based  
24 animus based on three quotes you had gotten  
25 from certain exhibits you reviewed, correct?

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1 C. Goldberg

2 A. Yes. It is actually my  
3 understanding that -- or I came to learn after  
4 I wrote my report that there was also some  
5 event where, I believe, it was Mr. Brodsky was  
6 given a cane for his 40 birthday with a horn  
7 on it.

8 Q. I am going to ask you to limit  
9 back into the report here. In coming to your  
10 conclusion that Morgan Stanley had a culture  
11 of age-based animus, this is again based on  
12 your review of the limited deposition  
13 transcripts and exhibits that you reviewed,  
14 correct?

15 A. Correct.

16 Q. So you feel that you are  
17 qualified to make a determination to the  
18 culture at Morgan Stanley based on a review of  
19 a few transcripts and exhibits?

20 MR. WELZER: Objection.

21 A. I think I can make a statement  
22 about whether the culture was aegis. I can't  
23 speak to every aspect of the culture, but a  
24 culture that let's lines like that go  
25 unchecked would be considered aegis, yes.

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1 C. Goldberg

2 these other documents?

3 A. I think when you consider the  
4 level of the individuals who are making those  
5 remarks, yes, I do think it is appropriate  
6 because, you know, when you have people, you  
7 know, the president and next level or two down  
8 making those comments, that creates a culture  
9 because, you know, it is very much  
10 role-modeled behavior.

11 So the subordinates see this is  
12 acceptable and then it becomes part of the  
13 culture.

14 Q. The first comment is:

15 "'Let's let the old guy get up to  
16 the front of the line.'"

17 Do you remember who made that  
18 statement?

19 A. Not specifically, no.

20 Q. Was it one of Mr. Sullivan's  
21 co-workers, Bill McMahon?

22 A. I couldn't tell you.

23 Q. Wasn't it made at a lunch when  
24 Mr. McMahon and Mr. Sullivan were at a lunch  
25 together?

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1 C. Goldberg

2 A. They were on a lunch line, as I  
3 recall it.

4 Q. Do you know how old Mr. McMahon  
5 is?

6 A. Not off the top of my head.

7 Q. If he was around the same age as  
8 Mr. Sullivan and made the comment while the  
9 two of them were hanging out on a buffet line,  
10 do you think that comment by a co-worker is  
11 indicative of a culture of age-based animus?

12 A. Just as if I, as a Jewish person,  
13 said let's let the Jew get to the front of the  
14 line, that would still be indicative of  
15 anti-semitic culture.

16 Q. Just that alone, one co-worker to  
17 another?

18 A. Well, it was heard by everybody  
19 on the line. That was one of the issues, is  
20 that there were about 20-some people in line,  
21 if I recall correctly. And it was said so  
22 that everybody in the line could hear it.

23 Q. Do you know why it was said by  
24 Mr. McMahon?

25 A. No.

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1 C. Goldberg

2 conducted your own HR investigations, when  
3 someone -- when an employee makes a complaint,  
4 and they say I have been a victim of some type  
5 of discrimination, do you always take them at  
6 their word?

7 A. I have never been involved in an  
8 investigation as an HR manager.

9 Q. You haven't, okay. Well, you  
10 commented on the accuracy of the investigation  
11 here, but you have never been involved in one  
12 yourself, correct?

13 A. Correct.

14 Q. The second comment is --

15 A. Excuse me, actually, let me  
16 correct that. I have never been involved as a  
17 manager in sexual harassment.

18 Q. As opposed to an employee filing  
19 the complaint?

20 A. I don't want you to construe it  
21 as me changing my story.

22 Q. That's fine. The second comment  
23 is:

24 "'Ed is an old school type  
25 manager.'"

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1 C. Goldberg

2 Do you remember the context of  
3 that statement?

4 A. Not off the top of my head.

5 Q. Wasn't it from the deposition of  
6 Rick Sanchez and --

7 A. I am fairly certain it was from  
8 Rick Sanchez.

9 Q. Let me try to refresh your  
10 recollection. In Mr. Sanchez's deposition he  
11 said Mr. John Schaefer had referred to Ed as  
12 an old school manager, correct?

13 A. If I could see the testimony to  
14 confirm that, I could confirm that.

15 Q. Let's just say hypothetically  
16 that's where it came from.

17 A. Okay.

18 Q. How do you know that that's an  
19 accurate statement, that John Schaefer  
20 actually said that?

21 A. Again, all I have to go on is the  
22 depositions and sworn testimony.

23 Q. You are assuming that everybody  
24 is being truthful?

25 A. Yes.

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1 C. Goldberg

2 Q. John Schaefer wasn't deposed in  
3 this case that you are aware of, correct?

4 A. Not that I am aware of.

5 Q. You never talked with him, you  
6 never met with John Schaefer?

7 A. No.

8 Q. Do you know if Mr. Sullivan heard  
9 this comment?

10 A. I don't know.

11 Q. Do you know if anyone other than  
12 Mr. Sanchez heard the comment?

13 A. I don't know.

14 Q. So it is possible that this  
15 comment could have just been between two  
16 managers, correct?

17 A. It is possible.

18 Q. Okay. If it is a comment from  
19 one manager to another, that no one else is  
20 accessible, where one manager says Ed is an  
21 old school manager, do you think that comment  
22 is indicative of a culture of age-based  
23 animus?

24 A. Certainly could be.

25 Q. But you are saying here it is,

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1 C. Goldberg

2 A. I did get a list, I don't know  
3 off the top of my head. I do know that Mr.  
4 Sanchez is done, I do know -- that's all that  
5 I remember off the top of my head.

6 Q. Mr. Sanchez wasn't a regional  
7 director then.

8 A. Yes.

9 Q. Do you know who the other  
10 regional directors were?

11 A. Their names were referenced  
12 throughout the depositions.

13 Q. When you were doing your  
14 comparison in the report that Mr. Sullivan is  
15 being compared to younger individuals, you  
16 only cite one regional director when you are  
17 saying there is at least seven or eight  
18 others, correct?

19 MR. WELZER: Objection.

20 A. Can you repeat that?

21 Q. Sure.

22 By your own testimony, by the  
23 way, there were eight regional directors  
24 altogether.

25 A. Thank you.

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1 C. Goldberg

2 Q. Ms. Stilwell was only one of the  
3 other seven, correct?

4 A. That stands to reason.

5 Q. When you are making a statement  
6 about Mr. Sullivan being compared to other  
7 individuals, you make no reference to his  
8 comparison to all the other regional  
9 directors, correct?

10 A. Ms. Stilwell was the only other  
11 one that had -- that fell in the lower side of  
12 the nine-cell talent grid.

13 Q. Okay, but Mr. Gorman is the one  
14 doing these interviews, correct?

15 A. Correct.

16 Q. There is no evidence in the  
17 record that Mr. Gorman even looked at the  
18 grids in the performance evaluations, correct?

19 MR. WELZER: Objection.

20 A. I am not sure.

21 Q. You don't know one way or the  
22 other?

23 A. I don't one way or the other.

24 Q. Are you aware that there were  
25 other regional directors that were retained

2/14/2008 Goldberg, Caren

1 C. Goldberg

2 who are older than in other industries in this  
3 report?

4 A. No.

5 (Discussion off the record from  
6 5:30 P.M. until 5:31 P.M.)

7 Q. Would you say in coming to your  
8 conclusion in your report in this case, that  
9 Mr. Gorman terminated Mr. Sullivan because of  
10 his age, it is important to eliminate other  
11 possible causes for his termination?

12 A. No. That's what I keep saying,  
13 is the fact that age was a factor doesn't mean  
14 that other things weren't a factor.

15 Q. Well, could these other factors  
16 have caused Mr. Sullivan's termination  
17 regardless of his age?

18 A. Yes.

19 Q. So, for example, some of the  
20 things that Mr. Gorman mentioned in his  
21 deposition transcript was that he had  
22 consulted with other top executives in the  
23 firm about Mr. Sullivan, do you recall that?

24 A. Yes.

25 Q. And that he reviewed Mr.

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2 Sullivan's compensation numbers and noticed  
3 that those had a downward trend, do you recall  
4 that?

5 A. Not specifically. I am sorry,  
6 his -- Mr. Sullivan's total compensation, yes,  
7 I do recall that.

8 Q. Do you recall that Mr. Gorman  
9 said that he evaluated Mr. Sullivan based on  
10 the interviews that he had with him?

11 A. Not specifically.

12 Q. If the report reflects that Mr.  
13 Gorman decided to terminate Mr. Sullivan  
14 because of his evaluation of him in the  
15 interview process, the downward trend in  
16 compensation, his evaluation from other top  
17 executives, could it be that Mr. Gorman would  
18 have come to that decision regardless of Mr.  
19 Sullivan's age?

20 A. It is possible.

21 Q. Do you have any way of knowing  
22 whether Mr. Sullivan's faith would have been  
23 different whether he was 55 or another age?

24 A. I don't.

25 Q. Isn't it good scientific practice

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1 C. Goldberg

2 when you are preparing reports like this, to  
3 at least address the other possible causes of  
4 Mr. Sullivan's termination?

5 A. I don't know. As I mentioned to  
6 you several times, this is the first time I  
7 have done a report like this. So I didn't  
8 really have anything to go by.

9 Q. I am just asking you as a  
10 long-time professor and having done many  
11 studies, when you have a hypothesis that you  
12 work on in a report, do you normally explain  
13 away other possible causes for the results of  
14 your study?

15 A. I wasn't -- this wasn't a  
16 hypothesis. A hypothesis is an expectation  
17 that something is going to -- that things  
18 are -- two things are going to be  
19 significantly different. I did not go in with  
20 that. I went in saying okay, I am going to  
21 read the depositions and see how I feel at the  
22 end of the day.

23 Q. But you didn't think it was  
24 necessary to at least explain why you thought  
25 Mr. Gorman's other explanations weren't the

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1 C. Goldberg

2 the peer review process?

3 MR. WELZER: Objection.

4 A. That's just a weird question. It  
5 would never go in the peer review process. So  
6 I wouldn't feel comfortable with it because it  
7 doesn't belong there.

8 Q. Why not?

9 A. Because it is not the same type  
10 of research that goes in peer review journals.

11 Q. Do you have any way of testing  
12 the validity of the conclusions that you  
13 reached in this report?

14 A. I guess this may have been what  
15 you were getting at before. I could submit it  
16 to other colleagues of mine that do research  
17 in the area of age discrimination and ask them  
18 for their feedback.

19 Q. But is there an objective way  
20 that you could check your conclusions for  
21 errors that you made?

22 A. Well, that's objective.

23 Q. Right. So this report is  
24 completely subjective; is that right?

25 A. No.

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1 C. Goldberg

2 Q. Is it possible that another  
3 professor could read the same materials that  
4 you did and not come to the conclusion that  
5 Mr. Sullivan was terminated because of his  
6 age?

7 A. Another professor -- you are  
8 going to have to give me a little more.

9 Q. Is it possible that another  
10 professor, like yourself, could review the  
11 same exact materials you did and come to the  
12 opposite conclusion?

13 MR. WELZER: Objection.

14 A. What conclusion?

15 Q. That Mr. Sullivan was terminated  
16 because of his age.

17 A. Not likely, but possible.

18 Q. But it is based on the subjective  
19 view and analysis of each person who would be  
20 reviewing the data, correct?

21 A. I don't think it is subjective.

22 Q. If another professor could review  
23 and come to the opposite conclusion, how is it  
24 not subjective?

25 A. Even in empirical research,